

**FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

IN REPLY REFER TO: 1800B2-RHW

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John J. McVeigh, Esquire
Bernstein & McVeigh
Suite 700
1818 N Street, N.W.
Washington, D.C. 20036

John P. Bankson, Jr., Esquire
Drinker, Biddle & Reath
Suite 900
901 Fifteenth Street, N.W.
Washington, D.C. 20005-2503

Robert W. Healy, Esquire
Smithwick & Belendiuk
Suite 510
1900 M Street, N.W.
Washington, D.C. 20036

Re: WJIM(AM)/-FM, Lansing, MI
File Nos. BAL-951023GL/BALH-951023GM
WITL(FM), Lansing, MI
File No. BALH-960116GL
WVFN(AM)/WVIC-FM, East Lansing, MI
File Nos. BAL-960202GM/BALH-960202GN

Dear Counsel:

This is in reference to: (1) the captioned application for the assignment of licenses of Stations WJIM(AM)/-FM, Lansing, Michigan, from Liggett Broadcast, Inc. ("Liggett"), to Jencom Broadcasting, Inc. ("Jencom"); (2) the Petition to Deny those assignments filed December 13, 1995, by Regional Radio Corporation ("Regional"); (3) the captioned application for assignment of the license of Station WITL-FM, Lansing, Michigan, from MSP Communications, Inc. ("MSP"), to Liggett; (4) the Petition to Deny the WITL assignment filed February 23, 1996, by Regional; (5) the captioned application for the assignment of the licenses of Stations WVFN(AM)/WVIC-FM, East Lansing, Michigan, from MSP to Jencom; and (6) the Petition to Deny and Motion to Consolidate the WVFN/WVIC assignments filed March 29, 1996, by Regional. Because certain of the parties and most of the issues involved in these assignments are related, we will grant Regional's Motion to Consolidate and consider

all the listed assignments herein. For the reasons set forth below, we deny all three of Regional's Petitions to Deny these assignments, and we grant the applications for assignment of the above-referenced licenses.

Regional's Petitions to Deny. Regional is the licensee of two commercial radio stations, WJXQ(FM) and WBHR(FM), licensed to Jackson, Michigan. According to Regional, its stations operate in the Lansing, Michigan, radio market and compete with WJIM, WJIM-FM, WITL, WVFN, and WVIC for the same advertisers, thereby conferring standing upon Regional to file its petitions to deny the assignments.

In its petitions to deny these related assignments, Regional alleges first that the proposed assignments of WJIM(AM)/-FM and WVFN/WVIC to Jencom are sham transactions devised to allow Liggett to acquire additional stations beyond the limit permissible under the Commission's multiple ownership rules in effect at the time these applications were filed. According to Regional, this ruse was accomplished by Liggett assigning (or "parking") WJIM(AM)/-FM to a new company, Jencom, which is wholly owned by Liggett's current President, James Jenson. At the same time, Liggett contracted to acquire WITL from MSP, which itself held options to acquire WVFN/WVIC; MSP will exercise the option, but WVFN/WVIC will then be sold by MSP to Jencom. Regional alleges that certain relationships between Liggett and Jencom -- including a guarantee by Liggett of Jencom's bank financing, a discount in the purchase price for WJIM(AM)/-FM to below what Liggett paid for these stations in 1993, a lease of studio space from Liggett to Jencom, and options for Liggett to acquire the stations in the future -- demonstrate that the Jencom acquisitions are not bona fide and that Liggett will in fact control all the stations. Regional alleges that the result will be that Liggett, after this and the other assignments that are discussed herein are completed, will then control seven stations in the Lansing market (in combination with its retained ownership of WFMK(FM), East Lansing), exceeding the limit allowed for this size market under former Section 73.3555(a) of the Rules. Regional alleges further that the relationships between Regional and Jencom violate the Commission's cross-interest policy.

Finally, Regional alleges that Liggett and Jencom lacked candor and engaged in misrepresentations in four respects: (1) in failing to disclose in the WJIM assignment application that the price Liggett paid to purchase WJIM(AM)/-FM in 1993 was \$3.5 million, which is \$1.5 million less than it is selling the stations to Jencom for; (2) in failing to disclose in the WJIM application that Liggett had already contracted to purchase WITL, which application was not filed until after the deadline for filing petitions to deny the WJIM assignments; (3) in stating that Liggett will have no ability to influence the operations and programming of WJIM(AM)/-FM after the closing (in light of the continuing relationships between Jencom and Liggett); (4) in failing to disclose that Liggett was "subsidizing" Jencom's purchase of WVIC/WVFN by tying Jencom's purchase of those stations to Liggett's purchase of WITL from the same seller, MSP, at an inflated price. The latest filing by Regional, its Supplement to Petition to Deny and Motion to Consolidate filed May 13, 1996, alleges that Jencom's May 1, 1996, amendment to its applications, reporting that it had entered into a time brokerage agreement, or LMA, to provide programming and sales for Station WMMQ(FM), Lansing, evidences a further suspect interrelationship between Liggett and Jencom. According to Regional, Liggett has an option to purchase WMMQ from its

present licensee, BB Broadcasting, Inc. ("BB"), which option "reportedly" contains a provision that Liggett has agreed to hold BB and its sole shareholder "harmless . . . with regard to the operation of WMMQ." However, it is Jencom, not Liggett, that is operating WMMQ pursuant to this LMA, thus, according to Regional, providing further proof that Liggett's sale of WJIM to Jencom is a "hoax perpetrated to permit Liggett to acquire WITL-FM in purported compliance with the FCC's multiple ownership rules as they then existed."

In its Supplement to Petition to Deny and Statement for the Record filed February 14, 1996, Regional makes the further allegation that during a settlement conference called by Liggett's and Jencom's attorneys and held on February 12, 1996, those attorneys stated that if an agreement to withdraw Regional's Petition to Deny and refrain from further petitions against Liggett and Jencom could not be reached promptly, "Liggett would pursue litigation against Regional before both the FCC and the Courts"; if such an agreement were reached, however, Liggett would not file any further pleadings before the FCC or the courts against Regional. Regional asserts that an agreement not to report something to the Commission that is a violation of the Commission's rules is an unlawful arrangement and that Liggett's counsel's offer was an improper threat against Regional, which should be imputed to Liggett because counsel was acting as Liggett's agent.

Responsive Pleadings. Liggett and Jencom, in their Oppositions to the three Petitions to Deny, contend that the assignments of WJIM(AM)/-FM and WVIC/WVFN to Jencom are fully bona fide transactions, and that Liggett will have no power or control over the operations of the stations. They acknowledge that the stations are to be sold to Jencom on "advantageous" terms, but that valid business considerations justify those terms and will not undermine Jencom's complete and independent ownership of the stations. Specifically, Liggett and Jencom state that Liggett was eager to "trade up" in the Lansing market, and when WITL suddenly became available, Liggett needed to sell WJIM(AM)/-FM in order to buy WITL in compliance with the local multiple ownership rules in effect at that time. According to Robert Liggett, principal owner of Liggett, he needed to act quickly and did not want to engage in a long search for a buyer or for the highest price for the stations. In addition, the seller of WITL, MSP, expressed a desire to sell WVIC/WVFN if it was going to sell WITL. James Jenson was then the President of Liggett, had known Mr. Liggett for a long time, and was an experienced broadcaster in whom Mr. Liggett had full confidence. Mr. Liggett offered to sell WJIM(AM)/-FM to Mr. Jenson, and they negotiated a purchase price of \$2 million for the stations. In addition, Mr. Jenson negotiated to acquire MSP's obligations to acquire WVIC and WVFN for an additional \$2 million. By contrast, the purchase price of WITL was \$16 million, which, according to Liggett, is reflective of its market prominence.

According to both Robert Liggett and James Jenson, Jenson contacted Comerica Bank to arrange for financing of the acquisitions. Comerica also has considerable loans outstanding to Liggett, and holds security interests in Liggett's assets and stock pledges from Mr. Liggett. Comerica informed Jenson that, in view of the start-up nature of his company, it would finance the acquisitions if Liggett agreed to expand the scope of the existing Liggett security agreements to cover the future Jencom indebtedness, and if Mr. and Mrs. Liggett provided personal guarantees of the indebtedness. Mr. and Mrs. Liggett agreed to Comerica's requirements in order to ensure Jencom's ability to promptly certify its financial qualifications

and also promptly close on the acquisitions, so that Liggett could in turn acquire WITL as quickly as possible. According to Mr. Liggett, such agreement to assist Jencom in obtaining financing "is part and parcel of the price of 'trading up' to the market's flagship station," WITL. In return for providing assistance in obtaining financing, Jencom also provided an option to Liggett to acquire control of Jencom through an exchange of Liggett stock, subject to later FCC approval. Both Mr. Liggett and Mr. Jenson deny that Liggett will have any authority to control or influence Jencom's affairs, or over the staffing, programming, or any other aspects of WJIM(AM)/-FM or WVIC/WVFN's operations during Jencom's tenure as licensee.

Jencom and Liggett also contend that the cross-interest policy would not be violated by the relationships contemplated in these financing and option agreements. First, Jencom asserts that due to the changes in the local multiple ownership rules brought on by the Telecommunications Act of 1996 (see Order, FCC 96-60, released March 8, 1996), one entity may now own outright WJIM(AM), WJIM-FM, WITL-FM, WVFN(AM), WVIC-FM, and WFMK(FM) (Liggett's retained Lansing station). Citing Kern Broadcasting Corp., 10 FCC Rcd 6584 (1995), Jencom and Liggett contend that the cross-interest policy cannot be violated where the combination of the total ownership would comply with the local multiple ownership rules. Second, Jencom and Liggett contend that the types of financing support being provided by Liggett do not exceed the types of arrangements that the Commission has found to be consistent with the cross-interest policy, especially where one licensee is trading up to a more successful station in the market. Jencom points to its showings set forth in the WJIM and WVIC/WVFN applications to demonstrate its compliance with the cross-interest policy.

With respect to Regional's claim that the parties to the assignments hid material facts from the Commission, Liggett and Jencom assert that all required information relating to the financing relationships between Liggett and Jencom was fully disclosed in the exhibits accompanying the WJIM, WITL, and WVIC/WVFN applications. As to Regional's claim that the parties delayed the filing of the WITL and WVIC/WVFN assignment applications until after the deadline for filing petitions to deny in the WJIM matter, the parties claim that MSP did not receive final copies of the signed agreements relating to WITL and WVIC/WVFN until December 20, 1996, not on October 17 as maintained by Regional, and also that the filing of the subsequent applications was delayed by the shutdown of the Federal government in November, December, and January. Since WJIM did not involve MSP (unlike the other two transactions), Liggett and Jencom did not have to wait to file the WJIM application until MSP was ready to file, as with the WITL and WVIC/WVFN applications. Liggett and Jencom also deny that there was an obligation to state in the WJIM application that Liggett had paid \$3.5 million for these stations three years earlier. The parties deny any intent to mislead the Commission in any of the respects alleged by Regional.

As for the allegation that Liggett's attorneys threatened to file additional objections against Regional with the Commission unless Regional agreed to withdraw its Petitions to Deny, Liggett's attorneys, John J. McVeigh and Lawrence Bernstein submitted declarations under penalty of perjury attesting that the settlement meeting at issue did not transpire as claimed by Regional, and that they did not say any of the things attributed to them by Regional. McVeigh and Bernstein also specifically denied that they made any threats against

Regional, and they further denied that they discussed withholding information regarding violations of the Commission's rules from the Commission. They also denied that there was any specific discussion of the terms of a possible settlement, and asserted that the discussion did not progress that far.

Discussion. At the outset, we have determined that Regional has standing under Section 309(d)(1) of the Communications Act of 1934, as amended, because Regional has established that its Stations WJXQ(FM) and WBHR(FM), Jackson, Michigan, are in economic competition with the stations at issue in these assignment applications.

In assessing the merits of a petitions to deny, the Commission is guided by Section 309(d)(1) and (2) of the Communications Act, as elucidated by the Court of Appeals in *Astroline Communications Company Limited Partnership v. FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988). First the Commission determines whether the petitioner has made specific allegations of fact that, if true, would demonstrate that grant of the application would be *prima facie* inconsistent with the public interest, convenience and necessity. If so, then the Commission proceeds to examine and weigh all of the material before it, including information provided by the applicants, to determine whether there is a substantial and material question of fact requiring resolution in a hearing. Finally, the Commission must determine whether grant of the application would serve the public interest. In these cases now before us, based on an examination of the applications, the petitions, the oppositions, and related pleadings, we conclude that the matters alleged by Regional do not raise any substantial or material questions of fact that would require resolution in a hearing.

The gravamen of Regional's claim is that the WJIM(AM/-FM and WVIC/WVFN transactions are not genuine, based on the contention that Robert Liggett is essentially the real party in interest behind Jencom. The Commission has held that in order to establish that an individual is a real party in interest, it must be shown that that individual has an undisclosed ownership interest in or is in a position to actually or potentially control an applicant. See *Inter-Urban Broadcasting of Cincinnati, Inc.*, 10 FCC Rcd 8777, 8778 (1995); *San Joachin Television Improvement Corp.*, 2 FCC Rcd 7004, 7009 (1987).

Here, Regional has failed to raise a substantial and material issue of fact as to whether Liggett actually will hold an undisclosed ownership interest in Jencom, or whether Liggett is or will be in a position to control either Jencom or the operations of stations WJIM(AM), WJIM-FM, WVIC, or WVFN-FM. First, with regard to Liggett's provision of personal guarantees to secure Jencom's loan from Comerica Bank, the Commission has explicitly found no improper control where one broadcaster has served as guarantor of another's loan. See *Dorothy J. Owens*, 5 FCC Rcd 6615, 6617 (1990); *Michael Bonner, Esq.*, 42 R.R.2d 1099 (1978). Indeed, even direct loans from one broadcaster in a local market to another -- which is by definition an even closer, more direct dependent relationship -- has been held not to provide the lending broadcaster with *de facto* control of the borrower. See *Inter-Urban Broadcasting of Cincinnati, Inc.*, *supra*, 10 FCC Rcd at 8779. It has also been determined that a lender holding a potential stock ownership (e.g., options or warrants convertible to voting stock) is not considered (without more) a real party in interest. See *Urban Telecommunications Corp.*, 7 FCC Rcd 3867, 3869 (1992); *Barry Skidelsky*, 7 FCC Rcd 1, 3-

4 (Rev. Bd. 1992). As for Liggett's options to purchase the stations (which are only exercisable upon prior Commission approval), the Commission has repeatedly held that options and warrants are only attributable upon exercise, as Section 73.3555 Note 2(f) of the Rules specifically states. BBC License Subsidiary L.P., 10 FCC Rcd 7926, 7933 (1995); WWOR-TV, Inc. 6 FCC Rcd 6569, 6572 n. 13 (1991). Especially because Liggett has no present equity interest in Jencom, the combination of Liggett's options and its provision of personal guarantees does not present a substantial and material issue of fact as to whether Liggett is a real party in interest in Jencom.

Nor do the advantageous terms afforded to Jencom by Liggett for the purchase of WJIM(AM)/-FM and WVIC/WVFN raise a substantial and material question of fact as to whether Liggett has an undisclosed ownership interest in Jencom or the ability to control the stations. Liggett's own interest in acquiring WITL as expeditiously as possible is a reasonable explanation for making the stations available to Jencom on advantageous terms, rather than placing the stations on the market and awaiting a buyer. The prior business relationship between Mr. Liggett and Mr. Jenson is also a valid explanation for these beneficial terms, as is the extension of an option to Liggett to acquire the stations at a later date. Nor does the lease of studio space from Liggett to Jencom give rise to an inference of control by Liggett over Jencom's stations, especially where Liggett and Jencom have submitted sworn statements to the contrary. We have no basis to doubt the validity of their sworn statements that the studio lease will be an arms-length arrangement, and the proximity of their respective stations' operations does not, in itself, raise a substantial and material question of fact as to whether Liggett will control Jencom's stations.

We also reject Regional's contention that the arrangements involving Station WMMQ provide evidence of control by Liggett over Jencom. According to Regional, Jencom will provide programming and sales for station WMMQ pursuant to an LMA, while Liggett, which holds an option to purchase WMMQ, has a provision in its option agreement whereby it will hold WMMQ's licensee "harmless . . . with regard to the operation of WMMQ." There is no basis to conclude that these two agreements are intertwined in a manner which demonstrates ultimate control of Jencom by Liggett. No substantial and material issue of fact is raised by these relationships with WMMQ.

In addition, the cases relied on by Regional in support of its claim that the facts in the present case give rise to a real party in interest issue do not support that conclusion. In *Pleasure Island Broadcasting, Inc.*, 6 FCC Rcd 4163 (Rev. Bd. 1991), the Review Board refused to add a real party in interest where one of three shareholders of a corporate applicant had little understanding of her corporate duties and had relied for advice on her husband, an experienced broadcaster. Here, there is little question that Mr. Jenson has the background and experience to act on his own behalf in operating the stations. Nor does the Board's decision in *KOWL, Inc.*, 49 FCC 2d 964 (Rev. Bd. 1974), support the finding that Liggett is the real party in interest in Jencom's applications. There the Board concluded that a real party in interest issue was warranted where the alleged real party's son had undertaken initial development of the project prior to his arrest on drug charges, at which time the son supposedly withdrew from the project. The father nonetheless agreed to buy all the station's equipment and lease it to the applicant and also agreed to lend the applicant all the applicant's

first year operational expenses, with no collateral or payments for the first year. By contrast, in the present case, Jencom arranged the station acquisition financing directly with an independent financial institution, and Liggett is not lending any funds to Jencom.

Cross-Interest Policy. We agree with Liggett and Jencom that the proposed transactions do not violate the cross-interest policy. The cross-interest policy considers the impact of "meaningful" nonattributable interests that are held by persons with attributable interests in other stations in the market. See Notice of Inquiry in MM Docket No. 87-154, Reexamination of the Commission's Cross-Interest Policy, 2 FCC Rcd 3699 (1987). However, as noted by Liggett and Jencom, after the revision of the multiple ownership rules to allow an increase in the number of stations that can be owned locally, one entity could own WJIM(AM), WJIM-FM, WITL-FM, WVFN(AM), WVIC-FM, and WFMK(FM). In such a case where all the stations at issue can be commonly owned in compliance with the rules, the Commission has declined to raise a cross-interest issue. See FM Broadcasters of Douglas County, 10 FCC Rcd 10429, 10231 (1995); Kern Broadcasting Corp., 10 FCC Rcd 6584, 6588 (1995). Moreover, in the present case, both Mr. Jenson and Mr. Liggett have attested that WJIM(AM)/-FM and WVIC/WVFN will be operated independently of Liggett's stations as fully competitive outlets, and Regional has provided no facts to contradict these statements. There is, therefore, no basis for questioning these representations. In addition we do not believe that the provision of guarantees by Liggett's owners for the benefit of Jencom's lender, nor the other advantageous sales terms discussed above, require invocation of the cross-interest policy. See Dick Broadcasting Co., Inc., of Tennessee, 47 FCC 2d 1051 (1974); Cleveland Television Corp., 91 FCC 2d 1129, rev. denied, FCC 83-235 (May 18, 1983), *aff'd* Cleveland Television Corp. v. FCC, 732 F.2d 962 (D.C. Cir. 1984).

Lack of Candor/Misrepresentation. We also reject Regional's contention that Jencom and Liggett lacked candor with, or made misrepresentations to, the Commission, and that they withheld materially significant information from the Commission. As noted above, Regional points to four areas of information where it claims these parties have withheld critical information: (1) in failing to disclose in the WJIM assignment application that Liggett paid more for WJIM(AM)/-FM than it was selling them to Jencom for; (2) in failing to disclose in the WJIM application that Liggett had already contracted to purchase WITL, which application was not filed until after the deadline for filing petitions to deny the WJIM assignments; (3) in stating that Liggett will have no ability to influence the operations and programming of WJIM(AM)/-FM after the closing; (4) in failing to disclose that Liggett was "subsidizing" Jencom's purchase of WVIC/WVFN by tying Jencom's purchase of that station to Liggett's purchase of WITL from the same seller, MSP, at an inflated price.

With respect to the price that Liggett paid for WJIM(AM)/-FM in 1993, which price was significantly higher than Jencom will pay for the stations, we note that the price an assignor previously paid for a station being sold is not requested anywhere in the application form. Therefore, Jencom and Liggett cannot be faulted for "failing" to disclose that price, especially where that price is found anyway in the Commission's records concerning the previous assignment. As for the alleged failure to report in the WJIM application that Liggett had simultaneously contracted to obtain an assignment of WITL and that Jencom was also going to acquire WVIC/WVFN, again the Form 314 application (at Question 6) only

specifically asks about broadcast applications currently "pending" before the Commission, and the WITL and WVIC/WVFN applications, which involved a third party, MSP, were not yet on file at the time the WJIM application was filed. MSP's President states in his Declaration that MSP did not receive signed copies of the WITL and WVIC/WVFN assignment agreements until December 20, 1995, and we have no basis to question MSP's sworn statement in this regard. Moreover, Jencom's intended acquisition of WVIC/WVFN was disclosed in the WJIM application in Attachment A to Exhibit 4, the option agreement. We must also recognize that the time frame for filing the relevant applications may well, as MSP and Liggett assert, have been disrupted by the several weeks of governmental shutdowns in December 1995 through January 1996. Especially in view of Liggett's and Jencom's public announcements regarding these related assignments, we cannot conclude that these parties were engaging in any attempt to mislead the Commission regarding the full range of the transactions involved here. Indeed, virtually all of Regional's allegations regarding the supposed withholding of information comes from these public statements and from the information actually filed by the parties.

Regional's assertion that Liggett falsely stated that it will have no power or authority to control the Jencom stations' programming or operations is based primarily on the fact that Jencom will lease studio space from Liggett for its stations. We do not believe that an inference of control can be made from this fact sufficient to contradict the declarations of Mr. Liggett and Mr. Jenson expressly denying that Liggett will have any such involvement. As for the allegation that Jencom's purchase of WVIC/WVFN is being "subsidized" by Liggett paying MSP a "premium" for WITL, again, the Form 314 assignment application does not specifically ask a question that would elicit such information, and we cannot conclude that Jencom and Liggett lacked candor in failing to respond to a question not asked.

Threats of Retaliatory Petitions. Finally, Regional's claim that Liggett and Jencom's attorneys, during the February 12, 1996, settlement conference, threatened to file objections against Regional's stations if Regional did not dismiss its petitions to deny the present assignments, cannot be credited. Without reaching the question of whether such allegations, if true, are violative of the Commission's rules or policies, we note that these allegations were made by Regional under Section 309(d)(1) of the Communications Act as part of its effort to have the Commission deny the assignments. As such, these allegations are subject to the express requirement of Section 309(d)(1) that "allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof." Regional's allegations of threats found in its February 14, 1996, Supplement to Petition to Deny and Statement for the Record are not supported by affidavits or declarations of the Regional attorneys who were present at the settlement conference. Nor did such supporting affidavits or declarations accompany Regional's February 26, 1996, Reply to Opposition to Supplement to Petition to Deny and Statement for the Record, which was filed in response to Liggett's and Jencom's attorneys' declarations under penalty of perjury denying that they had made any such threats against Regional. Thus, we will dismiss these allegations without further consideration.

Conclusion. In light of the above, Regional's December 13, 1995, Petition to Deny the application to assign the licenses of Stations WJIM(AM)/-FM from Liggett Broadcast,

Inc., to Jencom Broadcasting, Inc.; Regional's February 23, 1996 Petition to Deny the application to assign the license of Station WITL-FM from MSP Communications, Inc., to Liggett Broadcast, Inc.; and Regional's March 29, 1996, Petition to Deny and Motion to Consolidate the application to assign the licenses of Stations WVFN(AM)/WVIC-FM from MSP Communications, Inc., to Jencom Broadcasting, Inc., ARE DENIED. Having found that Liggett and Jencom are qualified to assign and purchase Stations WJIM(AM) and WJIM-FM and that the sale would further the public interest, convenience, and necessity, we GRANT that application. Having found that MSP and Liggett are qualified to assign and purchase Station WITL-FM and that the sale would further the public interest, convenience, and necessity, we GRANT that application. Having found that MSP and Jencom are qualified to assign and purchase Stations WVFN(AM) and WVIC-FM and that the sale would further the public interest, convenience, and necessity, we GRANT that application.

FEDERAL COMMUNICATIONS COMMISSION

Linda Blair, Chief
Audio Services Division
Mass Media Bureau